

INFORMATION SHEET
DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS
RESULTING FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK
COUNTY V. U.S. ARMY CORPS OF ENGINEERS

DISTRICT OFFICE: Huntington
 FILE NUMBER: 199900682-2

REGULATORY PROJECT MANAGER: Lee A. Pittman Date: February 4, 2004

PROJECT REVIEW/DETERMINATION COMPLETED: In the office N (Y/N) Date: _____
 At the project site Y (Y/N) Date: January 12, 2004

PROJECT LOCATION INFORMATION:
 State: Ohio
 County: Summit
 Center coordinates of site by latitude & longitudinal coordinates: 41° 06' 46.4040/81° 37' 40.1520
 Approximate size of site/property (including uplands & in acres): 10 acres
 Name of waterway or watershed: Pigeon Creek

SITE CONDITIONS:

Type of aquatic resource ¹	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear feet	Unknown
Lake									
River									
Stream									
Dry Wash									
Mudflat									
Sandflat									
Wetlands			4.61						
Slough									
Prairie pothole									
Wet meadow									
Playa lake									
Vernal pool									
Natural pond									
Other water (identify type)									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹ :	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able To Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?				X	
Is or would be used as habitat by other migratory birds that cross state lines?				X	
Is or would be used as habitat for endangered species?				X	
Is used to irrigate crops sold in interstate commerce?				X	

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary Or Approved X.

OPTIONAL ADDITIONAL INFORMATION SUPPORTING NJD (e.g., discussion may include information reviewed to assess potential navigation or interstate commerce connections - 1 to 3 paragraphs):

The remaining 4.61 acres of wetland are surrounded by upland and do not present a significant nexus to a water of the United States. Based on the absence of a hydrological connection or adjacency to a water of the United States, the remaining 4.61 acres of wetland are determined to be an isolated water of the United States.

MEMORANDUM FOR RECORD
Un Trib Pigeon Creek – 199900682-2
Smith Land Company
27 January 2004

1. By letter received November 24, 2003 Laybourne & Goldsmith, Attorneys at Law questioned if the future owners of three recently platted residential lots (Parcels A-C) owned by Smith Land Company would have to acquire authorization from the U.S. Army Corps of Engineers to impact wetlands on their property. The property in question is located east of Brunsdorph Drive in the City of Fairlawn, Summit County, Ohio.
2. By correspondence dated November 4, 1999 it was determined that 5.554 acres of jurisdictional wetland was present within the 10 acre Brunsdorph Drive project area. By letter dated April 14, 2000 Smith Land Company was authorized to place fill or dredged material into 0.945 acre of jurisdictional wetland to facilitate the construction of nine residential building lots. A total of 4.61 acres of jurisdictional wetland was recorded on the plat map as, "jurisdictional waters of the United States under the Federal Clean Water Act and in order to fill any of the delineated wetlands, not shown on this plat as to be filled, a permit must be obtained from the U.S. Army Corps of Engineers".
3. The Corps of Engineers authority to regulate waters of the United States is based on the definitions and limits of jurisdiction contained in 33 CFR 328. Navigable waters, their tributaries and adjacent wetlands are waters of the United States subject to the provisions of Section 404 of the Clean Water Act. The wetland limits were determined based on the presence of wetland hydrologic conditions, hydric soils and hydrophytic plant communities as described in the delineation report dated April 6, 1999.
4. During a site investigation conducted on January 12, 2004, it was determined that this wetland system is surrounded by upland and does not present a significant nexus to a water of the United States (See Attached Photographs). The wetland system is surrounded to the east by Ridge Wood Lakes residential subdivision, the yards from these homes extend into the wetland. To the north, the wetland system extends to Interstate I-77. Based on historical soils information drainage enters the site from the north and west. Brunsdorph Drive and the recently developed Smith Land Company lots are to the west of the wetland system. One unnamed intermittent tributary enters the wetland system from under Brunsdorph Drive in the vicinity of Lot #5. An upland slope encloses the southern boundary of this wetland. No outlets were observed leaving this wetland system. Therefore, based on the absence of a hydrological connection or adjacency to a water of the United States, the remaining 4.61 acres of wetland was determined to be an isolated water of the United States and is not within the Corps of Engineers regulatory jurisdiction.

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